

UPDATED INFORMATIVE DIGEST

Senate Bill (SB) 1896 (Ortiz), Chapter 817, Statutes of 2000, was enacted into law to allow bedridden persons to be admitted to, and remain in, specified licensed residential care facilities that secure and maintain an appropriate fire clearance. It also revised the definition of "bedridden," and required the California Department of Social Services (CDSS) and the Office of the State Fire Marshal (SFM), in consultation with the California Department of Developmental Services, to develop regulations to clarify fire safety and fire clearance requirements for specified residential care facilities. Those facilities include Residential Care Facilities for the Elderly (RCFEs) and residential care facilities that serve adults, the chronically ill, and children.

These regulations address the care of bedridden persons in RCFEs. SB 1896 provisions relating to RCFEs appear in Health and Safety Code Section 1569.72, which is part of California's RCFE Act. Other regulations addressing the care of bedridden persons in other facility types will be developed at a later date.

Prior to the enactment of SB 1896, existing law prohibited an RCFE from admitting or retaining a bedridden person, other than for a temporary illness or recovery from surgery. Current RCFE regulations pertaining to the care of the bedridden persons are outdated; they still prohibit the admission or retention of a bedridden person in an RCFE except on a temporary basis. However, since 2000, the Department has allowed bedridden persons to be cared for in RCFEs under the authority provided by Health and Safety Code Section 1569.72.

These regulations focus on RCFEs, in part, because of the significant amount of interest shown in 2007 by provider associations and advocacy groups in the statutes, regulations and procedures surrounding the admission and retention of bedridden persons in RCFEs. In response to this interest, the CDSS' Community Care Licensing Division (CCLD) developed an information release, CCL Information Release No. 2007-04, Bedridden Residents, which was issued June 13, 2007. This release provided information on applicable statutes and regulations that are associated with the care of persons who are bedridden. It is a public document, available on the CCLD website, and has been shared with providers, provider associations and advocacy groups.

The Department has not developed regulations for the care of the bedridden in RCFEs to date for several reasons. The Department believed it was prudent to wait until the SFM developed its bedridden regulations. The SFM bedridden regulations became effective on March 16, 2005. The Department was then able to use the SFM regulations as background information to develop its regulation package.

Another issue affecting the development of the CDSS' bedridden regulations was the need to determine the parameters for the definition of "bedridden." Health and Safety Code Section 1596.72(b)(1) provides:

For the purposes of this section, "bedridden" means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

After much discussion and consideration over a number of years, the Department has concluded that it did not have the expertise to determine what constitutes "appropriate and sufficient care staff" and "necessary mechanical devices." Moreover, the CDSS' interpretation is that the statute does not mandate the CDSS to develop regulations for the purposes of determining that a resident is NOT to be considered bedridden under Health and Safety Code Section 1569.72(b)(1), but rather leaves it to the Department's discretion. Considerations related to this interpretation include:

- CCLD staff are not fire safety experts or healthcare professionals.
- With regard to fire and life safety protections, a determination of a resident's "bedridden" status is best made by local fire units who determine how many RCFE bedridden residents a facility may retain based on a number of factors such as the available resources of the unit, the geographical terrain and time it will take for the local unit to respond to an emergent call, the ability of a resident(s) to self-evacuate, or the ability of the local unit to assist with evacuation of a resident(s) as well as the number of residents involved.

Healthcare professionals are best equipped to determine a resident's bedridden status as medical conditions and associated limitations are identified by healthcare professionals.

- An RCFE licensee is responsible to plan for, coordinate and meet, either directly or through the facilitation of services, each resident's health and safety needs. This includes evaluation of resident needs in the areas of sufficient staffing, mechanical devices and safety precautions.
- Per Health and Safety Code Section 1569.33(d), CCLD is only required to make a site visit to RCFEs every five years except in the event of a complaint or under specified circumstances.

These proposed regulations incorporate direction for the care of the bedridden persons in RCFEs as outlined in CCL Information Release No. 2007-04. While not addressing "appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions" as referenced in Health and Safety Code 1569.72(b)(1) and addressed above, the proposed regulations do address the following: notification requirements; fire-clearance requirements; the need for a care plan for each bedridden resident; training requirements for direct care staff that care for bedridden residents; the need for awake night staff; access to ongoing consultation with health care professionals; and appropriate equipment and devices. The proposed regulations are consistent with the spirit of the federal Olmstead decision which protects the rights of individuals to live in a 'home-like,' least restrictive environment.

These regulations were considered as Item #1 at the public hearing held on July 15, 2009 in Sacramento, California. Oral testimony was given by Jim Cullen from Community Care Options and Bernadette Descargar. Written testimony was received from Community Residential Care Association of California (CRCAC), California Assisted Living Association (CALA), Aging Services of California (ASC), and Tom Cullen from Community Care Options (CCO) during the 45-day comment period from May 29, 2009 to July 15, 2009.

Subsequent to the public hearing on July 15, 2009 of these regulations, Assembly Bill (AB) 762 became statute on January 1, 2010. This Statute amended Sections 1566.45, 1568.45, 1568.0832, and 1569.72 of the Health and Safety Code as it relates to RCFE, and bedridden residents specific to fire clearance requirements. As such, the CDSS has amended the regulations based on the clarity AB 762 establishes regarding the acceptance and retention of residents who are nonambulatory versus bedridden. Additionally, CDSS clarifies any earlier inference or confusion regarding the determination of a resident's bedridden status. The determination of the bedridden status of clients/residents who are not developmentally disabled is determined by the Director of Social Services, or his or her designated representative.

Pursuant to Government Code Section 11346.8, a 15-day renote and complete text of modifications made to the regulations following the public hearing were made available to the public following the public hearing from April 23, 2010 to May 10, 2010.

As a result of the 15-day renote, nonsubstantive typographical and formatting errors were corrected.